

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1367

Introduced by Assembly Member Laird

February 21, 2003

An act to add Section 25150.9 to the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1367, as amended, Laird. Hazardous waste: regulation.

Existing law establishes various standards for management and control of hazardous waste. Existing law authorizes the Department of Toxic Substances Control to adopt standards and regulations for the management of hazardous waste, as specified.

This bill would authorize the department to adopt alternative hazardous waste management standards by regulation, for hazardous waste management activities that meet specified criteria. The bill would require the department to make specified findings and analysis, and to make that analysis available to the public, *when it gives notice that it proposes to adopt those regulations and before adopting those regulations.*

The bill would provide that the department's authority to adopt regulations pursuant to the bill's provisions shall remain in effect only until January 1, 2007, unless a later enacted statute deletes or extends that date. However, the bill would also provide that this would not invalidate any regulation adopted pursuant to the bill's authority before that date.

Since a violation of the regulations authorized by this bill would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25150.9 is added to the Health and
2 Safety Code, to read:

3 25150.9. (a) (1) Subject to the requirements of subdivision
4 ~~(b)~~ *this section*, the department may, by regulation, establish
5 hazardous waste management standards as an alternative to one or
6 more of the standards specified in this chapter, for specified
7 activities that do not involve the management of any hazardous
8 waste other than the hazardous wastes identified in paragraph (4).

9 (2) The rulemaking file for any regulation adopted pursuant to
10 paragraph (1) shall specify the standard or standards of this chapter
11 for which the regulation provides alternative standards. Any
12 person complying with the alternative standards established by the
13 regulation is deemed to be in compliance with the standard or
14 standards of this chapter for which the regulation is specified as
15 being an alternative.

16 (3) During the development of a regulation proposed to be
17 adopted pursuant to this section that affects a waste that is
18 proposed to be, or is currently, disposed of in a solid waste facility,
19 the department shall consult with the California Integrated Waste
20 Management Board and the State Water Resources Control Board.

21 (4) This section applies only to the following hazardous
22 wastes:

23 (A) Hazardous waste that substantially meets the criteria for
24 universal wastes listed in Section 273.81 of Title 40 of the Code
25 of Federal Regulations, and that is regulated as universal waste in
26 the regulations adopted pursuant to this subdivision.



(B) Any other hazardous waste that meets one or more of the following criteria:

(i) The hazardous waste is generated by numerous households.

(ii) The hazardous waste is generated at numerous locations where prolonged accumulation of the hazardous waste, under the requirements of this chapter and the regulations adopted by the department governing accumulation and storage of hazardous waste, presents greater than normal public health or environmental risks. This type of location includes, but is not limited to, public elementary and secondary schools, day care centers, *and* nonhospital facilities that provide day care or residential care for the elderly or the physically or mentally impaired, ~~and. This type of location also includes~~ small government buildings frequented by numerous members of the public *where it is either unsafe or is not reasonably feasible to manage hazardous waste in accordance with the requirements of this chapter and the regulations adopted by the department governing accumulation of hazardous waste.*

(iii) The hazardous waste is generated by a wide variety of types of establishments, including, but not limited to, households, retail and commercial businesses, office complexes, small businesses, government organizations, and large industrial facilities.

(iv) The hazardous waste is a material that, due to its hazardous characteristics, is being or has been phased out of common use because the use of the material presents unacceptable risks to public health or safety or the environment. ~~This type of material includes, but is not limited to, mercury-containing products and materials coated with lead-based paint.~~

(v) Due to the unique characteristics of the hazardous waste or the circumstances surrounding its generation or subsequent management, one or more requirements of this chapter are determined by the department to be inappropriate, unsafe, or unworkable for the management of that hazardous waste.

(b) Before adopting a regulation pursuant to subdivision (a), the department shall ~~make all of the following findings, prepare an analysis to support those findings, make the analysis available to the public, and notify the public of the availability of the analysis in the notice of proposed action issued pursuant to Section 11346.4 of the Government Code.~~ *do all of the following:*

1 (1) Prepare an analysis, pursuant to subdivision (c), of the
2 hazardous waste management activity to which the alternative
3 management standards will apply. The department shall first
4 prepare the analysis as a preliminary analysis and make it
5 available to the public at the same time that the department gives
6 notice, pursuant to Section 11346.4 of the Government Code, that
7 it proposes to adopt a regulation pursuant to this section
8 establishing hazardous waste management standards as an
9 alternative to one or more of the requirements of this chapter. The
10 department shall include, in the notice, a reference that the
11 department has prepared a preliminary analysis and a statement
12 concerning where a copy of the preliminary analysis can be
13 obtained. The information in the preliminary analysis shall be
14 updated and the department shall make the analysis available to
15 the public as a final analysis not less than 10 working days prior
16 to the date that the department adopts the regulation.

17 (2) Make the findings and demonstrations required by
18 subdivision (d).

19 (3) Impose, as may be necessary, conditions and limitations on
20 the application of the alternative management standards that
21 ensure that the affected activity will not pose a significant potential
22 hazard to human health or safety or to the environment.

23 (c) Before the department gives notice of a proposal to adopt
24 a regulation establishing alternative management standards
25 pursuant to subdivision (a), and before the department adopts the
26 regulation, the department shall evaluate the affected hazardous
27 waste management activity and shall prepare, as required by
28 paragraph (1) of subdivision (b), an analysis that addresses all of
29 the following aspects of the activity, to the extent that the
30 requirement or requirements for which alternative management
31 standards will be established may affect these aspects of the
32 activity:

33 (1) The types of hazardous waste streams and the estimated
34 amounts of hazardous waste that are managed as part of the
35 activity and the hazards to human health or safety or to the
36 environment posed by reasonably foreseeable mismanagement of
37 those hazardous wastes and their hazardous constituents. The
38 estimate of the amounts of hazardous waste that are managed as
39 part of the activity shall be based upon information reasonably
40 available to the department.

1 (2) *The complexity of the activity, and the amount and*
2 *complexity of operator training, equipment installation and*
3 *maintenance, and monitoring that are required to ensure that the*
4 *activity is conducted in a manner that safely and effectively*
5 *manages the particular hazardous waste stream.*

6 (3) *The chemical or physical hazards that are associated with*
7 *the activity and the degree to which those hazards are similar to,*
8 *or differ from, the chemical or physical hazards that are associated*
9 *with the production processes that are carried out in the facilities*
10 *that produce the hazardous waste that is managed as part of the*
11 *activity.*

12 (4) *The types of accidents that might reasonably be foreseen to*
13 *occur during the management of particular types of hazardous*
14 *waste streams as part of the activity, the likely consequences of*
15 *those accidents, and the actual reasonably available accident*
16 *history associated with the activity.*

17 (5) *The types of locations at which the activity may be carried*
18 *out, an estimate of the number of these locations, and the types of*
19 *hazards that may be posed by proximity to the land uses described*
20 *in subdivision (b) of Section 25232. The estimate of the number of*
21 *locations at which the activity may be carried out shall be based*
22 *upon information reasonably available to the department.*

23 (d) *The department may not give notice proposing the adoption*
24 *of, and the department may not adopt, a regulation pursuant to*
25 *subdivision (a) unless it first finds and demonstrates, using*
26 *appropriate information, including the information developed in*
27 *the analysis prepared pursuant to subdivision (c) all of the*
28 *following conditions:*

29 (1) *One of the following applies:*

30 (A) *The hazardous waste is solely a non-RCRA hazardous*
31 *waste or the hazardous waste or its management is exempt from,*
32 *or is not otherwise regulated pursuant to, the federal act.*

33 (B) *The standard or standards in this chapter for which*
34 *alternative standards would be established is or are not a*
35 *requirement of the federal act, or the regulations adopted to*
36 *implement the federal act.*

37 (C) *The hazardous waste meets the criteria in subparagraph (A)*
38 *of paragraph (4) of subdivision (a).*

39 (2) *There are special characteristics or circumstances*
40 *associated with the hazardous waste, the generating or other*

1 management activity, or the universe of persons that generate or
2 manage the hazardous waste that make the alternative
3 management standards to be adopted by regulation more
4 appropriate than the corresponding standard or standards
5 contained in this chapter.

6 (3) One of the following applies:

7 (A) The hazardous waste management activity, to which the
8 alternative standards would apply, is not significant as a potential
9 hazard to human health or safety or to the environment, when
10 conducted in accordance with the conditions, limitations, and
11 other requirements specified in the regulations adopted pursuant
12 to subdivision (a).

13 (B) The standard or standards in this chapter for which
14 alternative standards would be established are not significant in
15 either of the following:

16 (i) Preventing or mitigating any potential hazard to human
17 health or safety or to the environment posed by the activity subject
18 to the alternative standards.

19 (ii) Ensuring that the activity is conducted in compliance with
20 applicable requirements of this chapter and the regulations
21 adopted pursuant to this chapter.

22 (C) The conditions, limitations, and other requirements
23 specified in the regulations adopted pursuant to subdivision (a)
24 accomplish the same purpose as the corresponding standard or
25 standards in this chapter, but at less cost or greater administrative
26 convenience and without increasing potential risks to human
27 health or safety or the environment.

28 (4) Compliance with the alternative management standards, in
29 lieu of the corresponding standard or standards in this chapter, is
30 not likely to result in any of the following:

31 (A) A significant reduced ability to track the hazardous waste
32 or to ensure that the hazardous waste is properly disposed of.

33 (B) A significant increased potential for any of the following
34 to occur:

35 (i) Release of hazardous waste or its constituents to the
36 environment.

37 (ii) Unauthorized persons or animals to come in contact with,
38 or otherwise be exposed to, hazardous waste or its constituents.

39 (iii) Mismanagement of the hazardous waste.

1 *(e) The authority of the department to adopt regulations*
2 *pursuant to this section shall remain in effect only until January*
3 *1, 2007, unless a later enacted statute, which is enacted on or*
4 *before January 1, 2007, deletes or extends that date. This*
5 *subdivision does not invalidate any regulation adopted pursuant*
6 *to this section prior to January 1, 2007.*

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

